

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

TEXAS LEAGUE OF UNITED LATIN AMERICAN CITIZENS, et al., §
§
§
Plaintiffs, §
§
v. § CIVIL ACTION NO. 5:19-CV-00074-FB
§
DAVID WHITLEY, et al., §
§
Defendants. §

DEFENDANT'S ADVISORY TO THE COURT

Defendant Texas Secretary of State David Whitley writes to advise the Court of his office's planned response to the Court's Orders from February 27, 2019, (ECF No. 61), and February 28, 2019, (ECF No. 64), and to seek further clarification of the Court's Orders.

The Court's mandatory injunction affirmatively orders Secretary Whitley to "advise and direct local voting officials not to send notice of examination letters nor remove voters from registration without prior approval of the Court." *See* ECF No. 61 at 4. As expressed by Secretary Whitley throughout this litigation (and in all other similar cases involving maintenance of the voting rolls), Secretary Whitley lacks the statutory power to direct county election officials to investigate the citizenship of any voter or to refrain from investigating the citizenship of any voter. That decision lies solely with the county election officials. *See* Tex. Elec. Code § 16.033. Further, cancelation of registration is uniquely a function of county election officials. *See* Tex. Elec. Code §§ 16.001, *et seq.*

Consistent with that statutory structure, and in an effort to comply with the Court’s injunction, Secretary Whitley proposes to send the draft Election Advisory attached as Exhibit A to all 254 counties in Texas. The draft Election Advisory will inform the counties of the Court’s Order to pause the performance of the counties’ list maintenance duties by not sending any notice of examination letters or removing “voters from registration without prior approval of the Court with a conclusive showing that the person is ineligible to vote.”

To provide the counties with the most accurate information, Secretary Whitley requests further clarification of the Court’s injunction. The February 28, 2019 Order limits the injunction to “the removal of any person from the current voter registration list based on non-citizenship and does not prohibit the removal of any person based upon information independent of Advisory 2019-02, such as death, relocation or felony conviction.” *See* ECF No. 64 at 1. Secretary Whitley’s draft Election Advisory states that counties are still allowed to remove voters from the rolls based upon citizenship information independent of Advisory 2019-02, including persons who are excused or disqualified from jury service because of non-citizen status or persons who request to be removed from the rolls because of their lack of citizenship.

If the Court agrees that Exhibit A complies with its injunction, Secretary Whitley is prepared to promptly send the Election Advisory to the counties.

Respectfully submitted.

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CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing document was filed electronically (via CM/ECF) on **February 28, 2019**, and that all counsel of record were served by CM/ECF.

/s/ Patrick K. Sweeten
PATRICK K. SWEETEN